IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4590 OF 1996

Shri. Dnyaneshwar P. Gharat
Bus Conductor No. 80296,
Deonar Depot, Traffic Deptt.
C/o. BEST Workers' Union
42, Kennedy Bridge,
Mumbai 400 004 ...Petitioner

Versus

The Genera Manager,
BEST Undertaking,
BEST Bhavan,
Mumbai 400 001 ...Respondent

.....

Mrs. Neeta Karnik, counsel for Petitioner

Mr. P.M. Palshikar with Ms. Rita Vora with Mr. Talsania i/b M/s. Crawford Bayley & Co. counsel for Respondent.

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CORAM: B. H. MARLAPALLE, J.

DATED OF RESERVING THE JUDGMENT: 25.01.2005

DATE OF PRONOUNCING THE JUDGMENT : 09.02.2005

JUDGMENT:-

1. The undisputed facts leading to this petition to be briefly stated are as under:-

. The petitioner joined the employment of respondent

i.e. BEST Undertaking on 10.4.1980 as a conductor. He was issued a charge sheet for unauthorised absence of 55 days during the period from April 1991 to March, 1992, on 20.4.1994, explanation submitted by him was not found satisfactory and therefore, a domestic enquiry was ordered. He participated in the enquiry, submitted his defence statement on or about 14.7.1994 and the Enquiry Officer in his report held that the charge of remaining absent without leave was duly proved. By an order dated 10.8.1994 he was dismissed from service by way of punishment and his appeal submitted under the service Rules came to be rejected on 13.9.1994. He, therefore, preferred second appeal under the service Rules and that also came to be rejected on 25.11.1994. He, therefore, challenged the order of dismissal by filing an application before the Labour Court under Section 78 of the Bombay Industrial Relations Act, 1946. The management appeared before the Labour Court in application (BIR) No. 38 of 1995 and opposed the relief prayed for. The learned Judge of the 4th Labour Court at Mumbai after hearing both the parties and taking into consideration the evidence placed before him, was pleased to allow the application partly vide his judgment and order dated 11.1.1996. The Management was directed to reinstate the applicant-employee as a last chance without backwages but continuity in service. In addition, his two

increments were directed to be withheld permanently after he resumed duties and his case was directed to be reviewed after two years.

. This order passed by the Labour Court came to be challenged before the Industrial Court at Mumbai in Appeal (IC) No. 24 of 96 and the learned President of the Industrial Court was pleased to allow the appeal filed by the Management vide his judgment and order dated 25.4.1996. The order of reinstatement passed by the Labour Court was set aside and the punishment of dismissal was upheld. Hence, this petition filed by the dismissed employee.

2. Mrs. Karnik, the learned counsel for the petitioner submitted that the Labour Court having considered the totality of circumstances and the nature of the misconduct proved against the petitioner had exercised its discretionary powers and moulded the relief by directing his reinstatement and denied the benefit of backwages. This order was passed within the powers available under Section 78 and 79 of the B.I.R. Act and, therefore, there was no reason for the Industrial Court to interfere in the same. The Industrial Court proceeded under the misconception that the Labour Court had no powers to mould the relief under Section 78 and 79 of the B.I.R. Act at par with the powers available under

Section 11-A of the Industrial Disputes Act, 1947. The reliance placed by the Industrial Court on the decision of this Court in the case of **Mohan Ganpat Nikam Vs. National Textile Corporation & Ors. (1996 Mh.L.J. 1691),** was grossly erroneous. It was further contended that the Industrial Court in appeal exceeded its powers in setting aside the relief granted by the Labour Court. Reliance in this regard has been placed on the decision of Division Bench of this Court in the case of **Vithoba Maruti Chavan Vs. S. Taki Bilgrami (1964 Mh.L.J. 717.)**

3. Mr. Palshikar appearing with Mr. Talsania and with Ms. Rita Vora i/b M/s. Crawford Bailey and Co. the learned counsel for the respondent Management, on the other hand, has supported the impugned decision of the Industrial Court. It was urged that of the petitioner was a case of chronic absenteeism and inspite of four opportunities having been granted from 1989 onwards, he did not improve his attendance and his habit of remaining absent without leave. The proved charges, if considered in this background, would be serious enough to warrant the extreme punishment of dismissal from service and the Labour Court did not support its order of moulding relief by giving proper reasoning. The Industrial Court was, therefore, justified while exercising its appellate powers to correct the errors committed by the Labour

Court. In support of the view taken by the Industrial Court, reliance has been placed on the following decisions of this Court.

i) Chandrakant Tatoba Kumbhar Vs. The Chairman, Agiruclture Produce Market Committee & Ors. (1989 I C.L.R. 376).

ii) Brihan Mumbai Municipal Corporation Vs. The General Secretary, BEST Workers Union & Ors. (1998 II CLR 1031).

iii) M.D. Kawade & Anr Vs. Mahindra Engineering & Chemical Products Ltd. Pune and Anr (2000 I CLR 545).

iv) Bruhan Mumbai Mahanagar Palika Vs. Dadasaheb Shivaji Waghmare & Ors. (W.P. No. 1788 of 1998 decided on 10.1.2002)

4. In all the above cases, this Court was dealing with the case of habitual absenteeism and on the background that more than three opportunities were given in the past to reform. In the case of Chandrakant Kumbhar (supra), the Division Bench of this Court while considering relief on the charges of misconduct having been proved and by taking into consideration the past record of service as well as the seriousness of the charges, held thus:-

> "The record unmistakably establishes that the petitioner is chronic defaulter and was twice removed from service earlier, but on humanitarian consideration was taken back. The petitioner has not given up his habits of attending office at his convenience and then behaving in arrogant fashion. The order of the Minister cannot

> be faulted because the time has come that when it is necessary to observe some discipline and some norms of good behaviour in the Government and semi-government offices. In our judgment, the punishment of removal on the facts and circumstances of the case cannot be faulted with."

5. In the instant case, the Labour Court held that the findings recorded by the Enquiry Officer were not perverse and the applicant Union espousing the cause of the present petitioner had given up the issue regarding the legality and fairness of the enquiry. After recording the findings that the charges of absenteeism were duly proved and that from 1988 to 1991, the employee was punished on four occasions on similar charges, the Labour Court held that the punishment was shockingly disproportionate. The cryptic reasonings set out by the Labour Court read thus:-

> It is an admitted fact that the applicant was punished on 4 occasions from 1989 for the similar misconduct i.e. absentism for sickness, etc. considering all these and the facts that there are leave reserved employees and badli employees available for performing the duties of the employee of the opponent when they are absented the said employee had put in 14 years of service at the time of dismissal and considering the age of the said employee, I am holding that the punishment of dismissal is shockingly disproportionate."

. The Labour Court further observed that one more opportunity was required to be given to the dismissed employee to reform and, therefore, directed his reinstatement without backwages.

6. The Industrial Court has certainly referred to the decisions of this Court in the case of Mohan Ganpat Nikam (supra) but it did not hold that the Labour Court had no powers to mould the relief in a given case. In para 22 of the impugned judgment, the learned President, Industrial Court observed,

> "There can be hardly any dispute on the proposition that a Labour Court or Industrial Court can interfere with the punishment for a misconduct if it is shocking disproportionate."

7. The Industrial Court after considering the facts of this case and by referring to a number of decisions of this Court as well as the Supreme Court, held that the Labour Court fell in serious errors in directing reinstatement. In the case of Vithoba Chavan (supra), the powers of the Labour Court while dealing with an application under Section 78 of the B.I.R. Act, have been elaborately explained. The Division Bench of this Court held that the said section gives ample powers to the Labour Court to interfere with a finding or with a punishment imposed

by the domestic tribunal if such an interference is called for on the ground of its impropriety in order to avoid grave injustice occurring in a particular case. In case of **Hindu Construction and Engineering Company ltd. Vs. Their Workmen (1965 (I) L.L.J. 462),** the Supreme Court on the powers of the Labour Court in moulding the relief stated thus:-

> "In respect of punishment it has been ruled that the award of punishment for misconduct under the standing orders, if any, is a matter for the management to decide and if there is any justification for the punishment imposed the tribunal should not interfere. The tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe. But where the punishment is shockingly disproportionate regard being had to the particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice."

. In the case of **B.C. Chaturvedi Vs. Union of India & Ors. (1996 I CLR 389),** the Supreme Court held that the disciplinary authority, and on appeal the appellate authority, being fact - finding authorities, have exclusive powers to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct.

8. In the case at hand, on perusal of the record and proceedings received from the court below, it is seen that out of 55 days set out in the charge sheet, charge of absenteeism was proved of 28 days and for the remaining days, the employee had proceeded on leave without prior sanction, but on resuming duty, he had submitted applications for leave which were turned down as there was no leave to his credit. His recent past record of service was most unsatisfactory. He was punished for absenteeism in the year 1988, 1989, 1990 and 1991. He was thus, a chronic case of absenteeism and did not utilise the opportunities repeatedly provided to him for reform. The Industrial Court noted that the petitioner was a staff member of the Public Undertaking engaged in providing essential service like transportation to the general public and the availability of the badli workers could not be a ground to let go a serious misconduct of the employee which would cause great inconvenience to the passengers and would adversely affect the moral and discipline required to be maintained in such a public undertaking. It further noted that the discipline in a public utility undertaking has to be placed at its highest and no attack on its observance should be tolerated. Opportunities, if not honoured and put into proper use go a long way taking lenient view. Chance may be

given to one to come to a right path, but, a public undertaking cannot afford and be asked to take chances, ultimately affecting its own utility. After all a corrective theory has its own limitations and cannot result in correcting a situation which may affect others on one hand and the Undertaking's utility on the other. A chronic defaulter cannot claim and does not deserve a further corrective approach on and on. The proved misconduct in the light of the past record had given a reasonable cause for dismissal from service, observed the lower appellate Court.

9. The reasoning given by the Industrial Court is duly supported by the decisions of this Court and relied upon by the learned counsel for the respondent management. The said reasoning cannot be termed as perverse or grossly erroneous so as to cause interference under the supervisory powers of this Court. Hence, the challenge to the decision of the Industrial Court is devoid of merits and the same must fail. In the result, the petition is hereby dismissed. Rule discharged with no order as to costs.